

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**THE MARSHALL COUNTY COAL COMPANY,
THE MARION COUNTY COAL COMPANY,
THE MONONGALIA COUNTY COAL
COMPANY, THE HARRISON COUNTY
COAL COMPANY, THE OHIO COUNTY
COAL COMPANY, and MURRAY ENERGY
CORPORATION,**

Plaintiffs,

v.

THE NEW YORK TIMES COMPANY,

Defendant.

ELECTRONICALLY FILED Jun 02 2017 U.S. DISTRICT COURT Northern District of WV
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Case No. 5:17-CV-79 (Bailey)

**CIVIL ACTION NO.: 17-C-70
Judge Hummel
(Marshall County Circuit Court)**

NOTICE OF REMOVAL

NOW COMES Defendant The New York Times Company, by undersigned counsel, and gives notice that this action is hereby removed from the Circuit Court of Marshall County, West Virginia to the United States District Court for the Northern District of West Virginia on the following basis:

1. On or about May 3, 2017, Plaintiffs The Marshall County Coal Company, The Marion County Coal Company, The Monongalia County Coal Company, The Harrison County Coal Company, The Ohio County Coal Company and Murray Energy Corporation filed a Complaint in the Circuit Court of Marshall County, West Virginia, at Civil Action No. 17-C-70, against Defendant The New York Times Company.

2. The Complaint attempts to state a claim for Defamation.

3. The Summons and Complaint were received by the West Virginia Secretary of State on or about May 9, 2017.

4. Service of the Summons and Complaint was had on The New York Times Company on or about May 23, 2017.

5. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a) and may be removed to this Court under 28 U.S.C. §1441(a) because, upon information and belief, the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is a civil action between citizens of different states.

6. A corporation is a citizen of both the state of its incorporation and the state where it has its principal place of business. 28 U.S.C. §1332(c). All parties to this case are corporations.

7. In their Complaint, Plaintiffs The Marshall County Coal Company, The Marion County Coal Company, The Monongalia County Coal Company, and The Harrison County Coal Company, allege that each and every one of them are “incorporated under the laws of Delaware” and have their principal place of business in the State of West Virginia. Complaint ¶¶7, 8, 9, 10. Plaintiffs The Ohio County Coal Company and Murray Energy Corporation each allege that they are “incorporated under the laws of the State of Ohio” and have their principal place of business in, respectively, the State of West Virginia and the State of Ohio. Complaint ¶¶11, 12.

8. Defendant New York Times Company is alleged to be and is, in fact, “organized under the laws of New York” with a principal place of business in the State of New York. Complaint ¶13.

9. Defendant The New York Times Company is not a citizen of the same state as any of the Plaintiffs and, therefore, the parties are completely diverse.

10. This Notice of Removal is filed within thirty (30) days of the service upon Defendant The New York Times Company.

11. A true and correct copy of this Notice of Removal has been or will be filed with the Clerk of the Circuit Court of Marshall County, West Virginia as required by 28 U.S.C.S. §1446(a) and provided to counsel for the Plaintiffs.

12. A copy of the complete record maintained by the Clerk of the Circuit Court of Marshall County, West Virginia is attached to this Notice of Removal as **EXHIBIT 1**.

WHEREFORE, Defendant The New York Times Company, hereby provides notice of its removal of the above-captioned action from the Circuit Court of Marshall County, West Virginia to the United States District Court for the Northern District of West Virginia and respectfully requests that this action proceed before this Court as an action properly removed from the Circuit Court of Marshall County, West Virginia.

Dated: June __, 2017

Respectfully Submitted,



Robert P. Fitzsimmons, Esq.

W.Va. State Bar I.D. #1212

Clayton J. Fitzsimmons

W.Va. State Bar I.D. #10823

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2017, I electronically filed the foregoing *Notice of Removal* with the Clerk of the Court using the CM/ECF system.

A copy of the foregoing Notice of Removal has been sent to counsel listed below via regular, U.S. Mail, on the 2nd day of June, 2017.

Jeffrey A. Grove Esq.
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Wheeling, WV 26003
Counsel for Plaintiff

Respectfully Submitted,



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